

LIMITED EASEMENT

RE:

Prepared by and return to: Natasha L. Worl, Southwest Regional Water District, Grantee, PO Box 177, Clarinda, IA 51632 Telephone: (712) 542-3259.

Grantor(s):

Grantee: Southwest Regional Water District

The undersigned Grantor(s), as Owner(s) of record of the real estate described above, for one dollar and other good and valuable consideration received, hereby grant(s), sell(s), transfer(s), and convey(s) to Grantee, its successors and assigns, an affirmative and perpetual easement in, to, and running with the real estate described above, together with a general and perpetual right of ingress and egress upon such real estate and upon any adjacent lands of Owner(s), LIMITED AS FOLLOWS:

1. This easement is solely for the general purposes of construction and laying and thereafter using, operating, inspecting, maintaining, repairing, replacing, or removing water pipeline and any necessary appurtenances thereto over, across, and through the real estate described above; and,
2. Once such water pipeline and necessary appurtenances thereto are installed and operating, then this easement (except the general rights of ingress and egress) shall be automatically reduced in scope to a width of thirty feet, the centerline of which shall be the water pipeline as laid and any necessary appurtenances thereto.

It is agreed that, during the period of initial construction, no crop damage will be paid out by the District. The District, its successor and assigns, hereby promises to maintain such water pipeline and any necessary appurtenances in good repair so that damage to adjacent real estate of Owner(s), if any damage there be, will be kept to a minimum. Said District agrees to pay crop damages should such be necessary for repair or maintenance of pipeline after initial construction.

"Grantee is an Equal Opportunity Provider and Employer."

Executed this _____ day of _____, 2019.

_____ Grantor

_____ Grantor

Address of Grantor(s): _____

STATE OF _____

County of _____, ss:

On this _____ day of _____, 2019 before me, the undersigned, a Notary Public in and for the aforesaid County and State personally appeared:

_____ to me known to be the same and identical person(s) who executed the within and foregoing instrument, and acknowledged that he/she/they executed the same as his/her their voluntary act and deed.

Notary Public in and for said State and County

Prepared by and return to: _____, Southwest Regional Water District, Grantee,
and PO Box 177, Clarinda, IA 51632 Telephone: (712)542-3259

[Iowa Guide 34]

WATER USERS AGREEMENT

Iowa Instruction 1942-A
10 YEAR CONTRACT

*Revised 12/18/18
2018-2019 Addition Project*

This agreement is entered into between the Southwest Regional Water District a [nonprofit corporation]

Hereinafter called the "WATER SYSTEM", and _____
member[s] of the Water System, hereinafter called "MEMBER".

WITNESSETH

Whereas, the MEMBER desires to purchase water from the WATER SYSTEM and to enter into a water users agreement as required by the Bylaws of the WATER SYSTEM.

NOW THEREFORE, in consideration of the mutual covenants, promises, and agreements herein contained, it is hereby understood and agreed by the parties hereto as follows:

1. WATER SERVICE LOCATION .The WATER SYSTEM shall furnish, subject to the limitation set out in its Bylaws and Rules and Regulations now in force or as hereafter amended or adopted, such quantity of water as MEMBER may desire in connection with MEMBER'S occupancy of the following described property:

Member's Name: _____ Map-Account No. _____
Grantor(s)

Address of Grantor(s): _____

Legal Description:

2. EASEMENT. The MEMBER agrees to grant to the WATER SYSTEM, its successors and assigns, a perpetual easement by executing the WATER SYSTEM'S Limited Easement.

3. **WATER SERVICELINE.** The MEMBER shall be responsible for installing and maintaining at the MEMBER'S expense a service line which shall begin at the meter pit installation and extend to the dwelling or place of use. The service line shall connect with the distribution system at a place designated by the WATER SYSTEM and the MEMBER with the WATER SYSTEM having final authority in any question of location. The WATER SYSTEM will determine in advance that the system has sufficient capacity to permit delivery of water at that point.

4. **INSTALLATION AND LOCATION.** At the discretion of the Water District the installation and location of the meter pit, remote readout, pipeline utility line markers, and related equipment shall be determined. This may include the Water District's meter pit location limit standards of a maximum of 20 feet inside the property right of way line or front yard and 20 feet from the property owner's driveway. **The MEMBER-CUSTOMER is responsible for the protection of all water service metering equipment.** This includes all pipeline utility line markers set by the Water District. The Water District will exercise the option to disconnect or remove any customer water service resulting in the loss of water service and membership in where the meter pit, water meter, remote readout, MXU, utility line markers, or related equipment has been damaged or tampered with. It is the MEMBER-USER responsibility to provide continued access to their water meter services. **INACCESSIBLE WATER METER SERVICE NOTICES will be issued to the MEMBER-USER by the Water District of those meter services that continue to prevent access to the meter pit due to parked vehicles, large bales, other large obstructions, electric fences, animal nuisance or other constraints placed by the property owner.** After 30 days a 2ND NOTICE - INACCESSIBLE WATER METER SERVICE will be sent to those MEMBERS-USERS that have not removed the obstruction. This 2nd notice will also include a \$20.00 ASSESSMENT FEE to be charged to the account and also PROVIDE A SERVICE DISCONNECTION DATE should the MEMBER-USER continue to prevent complete access to the water meter service.

5. **WATER RATES AND REGULATIONS.** The MEMBER agrees to comply with and be bound by the Articles, Bylaws, [Rules and Regulations] of the WATER SYSTEM, now in force or to be in force or as hereafter duly and legally supplemented, amended, or changed. The MEMBER also agrees to pay for water at such rates, time[s] and place[s] as shall be determined by the WATER SYSTEM, and agrees to the imposition of such penalties for any noncompliance as are now set out in the WATER SYSTEM'S Bylaws and [Rules and Regulations], or which may be hereafter adopted and imposed by the WATER SYSTEM.

6. **CONNECTION FEE.** The MEMBER agrees to pay a connection fee in the amount of \$450.00 to connect to the distribution system. This fee shall include only the water meter, meter setter, utility box and cover. All other construction costs required to provide water service under the specifications of the WATER SYSTEM shall be the MEMBER'S expense. **At limited times Federal Grants and Loans may be secured by the WATER SYSTEM and used to subsidize overall connection costs to the system to new water service applicants only.** The availability of these loan and grant funds is based on restrictions established by State and Federal Programs. **Connection Fees previously paid by MEMBER'S are not eligible for any refunds.** A cutoff valve shall also be included in the water meter installation at each service. The WATER SYSTEM shall have exclusive right of ingress and egress to use the cutoff valve and water meter installation. Should it be determined by the WATER SYSTEM that a service connection cannot be constructed due to any of the following: lack of project feasibility, inadequate financing of construction costs and deposit fees, insufficient water supply or pressure, or other service issues, the MEMBER shall be refunded the connection fee.

7. **WATER SHORTAGE.** The WATER SYSTEM shall determine the allocation of water to MEMBERS in the event of a water shortage; and may shut off water to a MEMBER who allows a connection or extension to be made to the MEMBERS service line for the purpose of supplying water to another user or location.

8. **MINIMUM RATE.** The MEMBER shall pay for such water service beginning in 30 days from the date the service hookup is installed and available for water service and at such rates, time, and place as shall be determined by the WATER SYSTEM, but shall be not less than a minimum charge of \$34.00 for 0,000 gallons per month.

9. SERVICE CONNECTION. The MEMBER shall connect the service lines to the WATER SYSTEM'S meter pit installation and shall commence to use water from the system within 60 days after the date of notification that the water is made available to the MEMBER by the WATER SYSTEM. Water charges to the MEMBER shall commence on the date water service is made available to the MEMBER'S property. It is recommended that all new private service connections completed on the rural water service system be performed by a qualified plumber and that the new MEMBER-CUSTOMER check their water meter for any possible leaks on their private water system. All rural water patrons are responsible for all water used through their water meter. All idle-disconnected service connections [91 days or longer of nonpayment to past water account] that are requesting reconnection of water service shall pay any outstanding debts or liens owed as a past water account and as a new applicant or property owner to the WATER SYSTEM. The applicant shall also be required to sign a new Ten-Year Water User's agreement and pay a \$75.00 reconnection fee and the monthly service charge must be paid for each month the account has been disconnected up to a period of six months or up to the maximum of \$200.00. Water service **shall not be made available until the signed agreement is received by the WATER SYSTEM, the outstanding debts or liens are paid and the reconnection fee is paid.** The WATER SYSTEM will exercise the option to decline membership, refuse, or terminate water service to applicants that do not pay the outstanding debts or liens owed as a past water account and as a new applicant or property owner, the reconnection fee, sign-execute a Ten Year Water User's Agreement or misrepresent any information provided to the WATER SYSTEM during the application process.

10. MINIMUM CONTRACT TERM. The MEMBER agrees to use the water and pay a monthly water bill for a period of ten years from the date water is available. The District reserves the right to remove the service connection and complete meter pit setting upon notification at anytime if the MEMBER-CUSTOMER fails or refuses, without just cause as determined by the Board of Directors to continue to use water and pay a monthly water bill.

11. LIQUIDATED DAMAGES CLAUSE. In the event the MEMBER fails or refuses, without just cause as determined by the Board of Directors to connect a service line to the WATER SYSTEM meter pit installation as set forth above, and to continue using water for a period of ten years and pay a monthly water bill, the MEMBER agrees to pay the WATER SYSTEM a lump sum as liquidated damages of \$5000.00 based on the average project development from the total cost per MEMBER.

The average project development cost is determined from the total cost of the WATER SYSTEM'S water supply, treatment, distribution and storage facilities. The liquidated damages payment will be on the following declining schedule of payment by percentage depending on the year the MEMBER fails to comply with the water users agreement

- 100% for default prior to the end of the first year.
- 90% for default prior to the end of the second year.
- 80% for default prior to the end of the third year.
- 70% for default prior to the end of the fourth year.
- 60% for default prior to the end of the fifth year.
- 50% for default prior to the end of the sixth year.
- 40% for default prior to the end of the seventh year.
- 30% for default prior to the end of the eighth year
- 20% for default prior to the end of the ninth year.
- 10% for default prior to the end of the tenth year.

It is expressly understood and agreed by the parties hereto that the above listed lump sum and percentage schedule shall be settlement for the facility expenditures made by the WATER SYSTEM for the MEMBER'S benefit. The parties hereto have agreed upon said lump sum and percentages in an attempt to make reasonable forecast of the probable actual loss because of the difficulty of estimating with exactness the resulting damages.

12. PENALTIES. The failure of a MEMBER to pay water charges duly imposed shall result in the automatic imposition of the following penalties:

A. Nonpayment by the 15th of the month will be subject to a penalty of 10 percent of the delinquent account beginning on the 16th of the month regardless of what day of the week the 15th falls on.

B. Nonpayment within 25 days from the 15th will result in the water being shut off from the MEMBER'S property.

C. In the event it becomes necessary for the WATER SYSTEM to shut off the water from a MEMBER'S property, a fee set by the WATER SYSTEM in its rate schedule will be charged for a reconnection of the service.

D. Nonpayment of water bill within 25 days from the 15th shall, at the sole option of the Board of Directors of the WATER SYSTEM, be ample justification for declaring the amount determined pursuant to Section 10 hereof immediately due and payable and terminate the membership in the WATER SYSTEM by the MEMBER. Reconnected water services subject to re-activation of membership [91 days or longer of nonpayment to past water account] will be required to pay any outstanding debts or liens owed by the applicant or property owner, pay a reconnection fee, and enter into a new 10 Year Service Agreement. Water service reconnection shall not be made available until the signed agreement is received by the WATER SYSTEM, the outstanding debts or liens are paid and the reconnection fee is paid.

E. Such other legal and equitable remedies as allowed by law may be pursued by the WATER SYSTEM.

13. CREATION OF LIEN. Any liquidated damages, unpaid water charges, or other charges due the WATER SYSTEM from the MEMBER shall become a lien against the real estate of the MEMBER which is subject to the easement set forth herein.

14. CROSS CONNECTIONS. The MEMBER agrees that no other present or future source of water will be connected to any waterlines served by the WATER SYSTEM'S waterlines and will physically disconnect from the present water supply prior to connecting to and switching to the WATER SYSTEM'S line and shall eliminate their present or future cross-connections in the MEMBER'S system. The MEMBER is required through State and Federal regulations to maintain a positive disconnection between their well water system and the rural water system. The Water District will require compliance of these regulations and will notify the owner of pending disconnection of service should a cross-connection be detected on the MEMBER-CUSTOMER private water system side. Any MEMBER with a cross-connection will also be responsible for the damages associated or as a result of health and safety of the WATER SYSTEM'S members.

15. REPAIRS. The WATER SYSTEM shall have the right to shut water off for the purpose of maintenance, inspection, and repair of the distribution system. The WATER SYSTEM shall have reasonable time to repair any accidents, leaks, or breaks in the distribution system. Such repairs shall be made with due diligence and without unnecessary delay. The WATER SYSTEM will also maintain service and routine repairs to the customer's water meter box.

16. DAMAGES. MEMBER shall not assert any claim under the terms of this agreement against the WATER SYSTEM for loss or damage that may result from the inadequacy or non-availability of water as to both pressure and quantity, or from leaks or other defects in the distribution system or MEMBER'S service line. MEMBER shall indemnify the WATER SYSTEM from any and all claims or liability for loss or damage to any persons or property resulting from, rising out of or connected with the rendition to service under the terms of this agreement, in the event of such inadequacy or non-availability of water, or in the event of leaks or other defects in the distribution system or MEMBER'S service line.

17. TRANSFERABILITY. This agreement or any right under terms of this agreement is transferable by the MEMBER upon the prior written consent of the WATER SYSTEM.

18. ATTORNEY'S FEES. In the event that any action is filed in relation to this agreement, the unsuccessful party in the action shall pay to the successful party, in addition to all the sums that either party may be called on to pay, a reasonable sum for the successful party's attorney's fee.

19. ENTIRE AGREEMENT. This agreement shall constitute the entire agreement between the parties and any prior understanding or representation of any kind preceding the date of this agreement shall not be binding upon either party except to the extent incorporated in this agreement.

20. MODIFICATION OF AGREEMENT. Any modification of this agreement or additional obligation assumed by either party connected with this agreement shall be binding only if evidence in writing signed by each party or an authorized representative of each party MEMBER, for itself, its successors and assigns.

21. COVENANT RUNNING WITH THE LAND. The rights and obligations of the parties shall be a covenant running with the land and shall inure to the benefit of the parties to this agreement, their respective heirs, successors, or assigns.

22. PARAGRAPH HEADINGS. The titles to the paragraphs of this agreement are solely for the convenience of the parties and shall not be used to explain, modify, simplify, or aid in the interpretation of the provisions of this agreement.

23. NONDISCRIMINATION STATEMENT. In accordance with Federal law and U.S. Department of Agriculture policy, this institution is prohibited from discriminating on the basis of race, color, national origin, sex, religion, age, disability, or marital or family status. (Not all prohibited bases apply to all programs.)

To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, Room 326-W, Whitten Building, 1400 Independence Avenue, SW, Washington, D.C. 20250-9410 or call (202) 720-5964 (voice and TDD). USDA is an Equal Opportunity provider and Employer.

IN WITNESS WHEREOF, we have executed this agreement this ____ day of _____ 20_19_.

Grantor(s)

Grantor(s)

STATE OF IOWA

COUNTY OF _____, ss:

On this _____ day of _____, 2019, before me, the undersigned, a Notary Public in and for said county and state, personally appeared:

to me known to be the same and identical person(s) who executed the within and foregoing instrument, and acknowledge that they executed the same as their voluntary act and deed.

Notary Public in and for said county and state

.....

Executed on behalf of the Southwest Regional Water District this ____ day of _____, 20_19_.

Brian Herzberg President

STATE OF IOWA

COUNTY OF PAGE, ss:

On this _____ day of _____, 20_19_, before me, the undersigned, a Notary Public in and for said county and state, personally appeared Brian Herzberg, to me personally known, who being by me duly sworn, did say that he is the President of said corporation executing the within and foregoing instrument; that the seal affixed thereto is the seal of said corporation; that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors; and that the said Brian Herzberg as such officer acknowledged the execution of said instrument to be the voluntary act and deed of said corporation, by it and him voluntarily executed.

Notary Public in and for said county and stat